

NOTICE

The Respondents identified in the attached Statement of Charges issued by the Washington State Department of Financial Institutions have the right to contest the allegations made therein by requesting an administrative hearing.

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**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
CONSUMER SERVICES DIVISION**

IN THE MATTER OF DETERMINING
Whether there has been a violation of the
Uniform Money Services Act of Washington by:

NATIONWIDE BIWEEKLY ADMINISTRATION,
INC., and
DANIEL S. LIPSKY, Principal,

Respondents.

NO. C-13-1195-13-SC01

STATEMENT OF CHARGES and
NOTICE OF INTENTION TO ENTER
AN ORDER TO DENY LICENSE, PROHIBIT
FROM INDUSTRY, IMPOSE FINE, ORDER
RESTITUTION, AND COLLECT
INVESTIGATION FEE

INTRODUCTION

Pursuant to RCW 19.230.130 and RCW 19.230.310, the Director of the State of Washington Department of Financial Institutions (Director) is responsible for the administration of chapter 19.230 RCW, the Uniform Money Services Act (Act). After having conducted an investigation pursuant to RCW 19.230.130 and WAC 208-690-180, and based upon the facts available as of the date of this Statement of Charges and Notice of Intention to Enter an Order to Deny License, Prohibit from Industry, Impose Fine, Order Restitution, and Collect Investigation Fee (Statement of Charges), the Director, through his designee, Division of Consumer Services Director Deborah Bortner, institutes this proceeding and finds as follows:

I. FACTUAL ALLEGATIONS

1.1 Respondents.

(a) **Nationwide Biweekly Administration, Inc. (Respondent Nationwide)** is a money transmitter with its corporate office at: 855 Lower Bellbrook Road, Xenia, OH 45385. Respondent Nationwide is registered as a money transmitter with the Financial Crimes Enforcement Network of the U.S. Department of the Treasury. Respondent Nationwide is approved for a license to engage in

1 the business of a money transmitter in at least 19 states. On or about December 29, 2012, Respondent
2 Nationwide submitted an application to the State of Washington Department of Financial Institutions
3 (Department) to engage in the business of a money transmitter, and the application is pending.
4 Respondent Nationwide has never been approved for a license by the Department to engage in the
5 business of a money transmitter.

6 (b) **Daniel S. Lipsky (Respondent Lipsky)** is the President, Secretary, Treasurer, Director,
7 and Owner of Respondent Nationwide.
8

9 **1.2 Unlicensed Activity.** Between on or about April 21, 2003, and the date of this Statement of
10 Charges, Respondent Nationwide engaged in the business of money transmission, or advertised,
11 solicited, or held itself out as providing money transmission for persons in the state of Washington.
12 Respondent Nationwide sent postal mail solicitations to residential mortgage loan borrowers in the
13 state of Washington advertising its mortgage payment program. Respondent Nationwide's postal mail
14 solicitations induced residential mortgage loan borrowers in the state of Washington to enroll in its
15 mortgage payment program by telephone. Respondent collected setup and debit fees from residential
16 mortgage loan borrowers in the state of Washington who enrolled in its mortgage payment program.
17

18 **1.3 Consumer Complaints.** At least 13 residential mortgage loan borrowers in the state of
19 Washington filed complaints against Respondent Nationwide between on or about March 14, 2007,
20 and the date of this Statement of Charges. Each of these residential mortgage loan borrowers alleged
21 they received a postal mail solicitation from Respondent Nationwide inducing them to enter into an
22 agreement with Respondent Nationwide to transmit mortgage payments. At least five residential
23 mortgage loan borrowers alleged that Respondent Nationwide mislead them into believing it was
24 affiliated with their residential mortgage loan lender, servicer, owner, or government agencies. At
25

1 least five residential mortgage loan borrowers alleged that Respondent Nationwide mislead them as to
2 the terms of its mortgage payment program's debit and payment schedule. At least seven residential
3 mortgage loan borrowers alleged that Respondent Nationwide mislead them as to the terms of its
4 mortgage payment program's setup fee. At least five residential mortgage loan borrowers alleged that
5 Respondent Nationwide mislead them as to the terms of its mortgage payment program's cancellation
6 policy.

7
8 **1.4 Misleading and False Representations.** Between on or about April 21, 2003, and the date of
9 this Statement of Charges, Respondent Nationwide and Respondent Lipsky made false and misleading
10 representations to residential mortgage loan borrowers in the state of Washington, by:

11 (a) falsely representing that Respondent Nationwide was associated with borrowers'
12 residential mortgage loan lenders, servicers, owners, or government agencies;

13
14 (b) falsely representing that Respondent Nationwide transmitted residential mortgage loan
15 payments on borrowers' behalf on a biweekly basis through its mortgage payment program when it
16 actually transmitted such payments on a less frequent basis;

17 (c) falsely representing the amount of interest borrowers would save by repaying their
18 residential mortgage loans through Respondent Nationwide's mortgage payment program; and

19
20 (d) falsely representing the cost of Respondent Nationwide's mortgage payment program to
21 borrowers by misrepresenting that there was, "no upfront fee," when borrowers actually incurred debt
22 for a non-refundable setup fee equal to the amount of one biweekly debit upon entering the mortgage
23 payment program.

1 **1.5 Prior Enforcement Actions.** Regulatory agencies in other jurisdictions have initiated
2 enforcement actions against Respondent Nationwide on at least five occasions as follows:

3 (a) On or about September 20, 2002, the State of Illinois Office of Banks and Real Estate,
4 Bureau of Banks and Trust Companies issued Order to Cease and Desist No. 2002-BBTC-70, finding,
5 among other things, that Respondent Nationwide's solicitation materials violated applicable law and
6 ordering Respondent Nationwide to cease and desist.
7

8 (b) On or about April 29, 2005, the State of Ohio Office of the Attorney General and
9 Respondent Lipsky, on behalf of Respondent Nationwide, entered Assurance of Voluntary Compliance
10 No. 244238, in which Respondent Nationwide agreed, among other things, to ensure that its
11 advertising, solicitation materials, and disclosure policy complied with applicable law.
12

13 (c) On or about June 9, 2008, the State of Ohio Office of the Attorney General filed
14 Complaint No. 2008CV0678 against Respondent Nationwide in the Court of Common Pleas, Greene
15 County, Ohio, alleging, among other things, that Respondent Nationwide's advertising, solicitation
16 materials, and disclosure policy violated applicable law and the terms of Assurance of Voluntary
17 Compliance No. 244238. On or about February 10, 2010, the Court of Common Pleas, Greene
18 County, Ohio, entered Agreed Entry No. 2008CV0678, permanently enjoining Respondent Nationwide
19 from violating applicable law relating to its advertising, solicitation materials, and disclosure policy.
20

21 (d) On or about October 21, 2011, the State of New Hampshire Banking Department and
22 Respondent Lipsky, on behalf of Respondent Nationwide, entered Consent Order No. 08-241, finding,
23 among other things, that Respondent Nationwide, engaged in unlicensed money transmitter activity
24 and failed to ensure its advertising and solicitation materials complied with applicable law.
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1 (e) On or about December 28, 2012, the State of Georgia Department of Banking and
2 Finance and Respondent Lipsky, on behalf of Respondent Nationwide, entered Consent Order No.
3 DBF-MBL-21-0012, in which Respondent Nationwide agreed, among other things, to ensure its
4 advertising and solicitation materials complied with applicable law.

5
6 **1.6 Ongoing Investigation.** The Department's investigation of the alleged violations of the Act by
7 Respondents continues to date.

8 II. GROUNDS FOR ENTRY OF ORDER

9 **2.1 Requirement to Obtain License.** Based on the Factual Allegations set forth in Section I
10 above, Respondent Nationwide is in apparent violation of RCW 19.230.030(1) for engaging in the
11 business of a money transmitter without a license.

12 **2.2 Prohibited Practices.** Based on the Factual Allegations set forth in Section I above,
13 Respondent Nationwide is in apparent violation of RCW 19.230.340 for:
14

15 (a) directly or indirectly employing any scheme, device, or artifice to defraud or mislead
16 any person, including but not limited to engaging in bait and switch advertising or sales practices, as
17 alleged in Paragraph 1.4;

18 (b) directly or indirectly engaging in any unfair or deceptive act or practice toward any
19 person, including but not limited to any false or deceptive statement about fees or other terms of a
20 money transmission or currency exchange, as alleged in Paragraph 1.4;
21

22 (c) directly or indirectly obtaining property by fraud or misrepresentation as alleged in
23 Paragraph 1.4; and
24

1 (d) knowingly making, publishing, or disseminating any false, deceptive, or misleading
2 information in the provision of money services as alleged in Paragraph 1.4.

3 **2.3 Character and General Fitness.** Based on the Factual Allegations set forth in Section I
4 above, Respondent Nationwide fails to meet the requirements of RCW 19.230.070 and WAC 208-690-
5 070, by failing to demonstrate character and general fitness such as to indicate that it is in the interest
6 of the public to permit the applicant to engage in the business of providing money transmission
7 services.
8

9 **III. AUTHORITY TO IMPOSE SANCTIONS**

10 **3.1 Authority to Deny License.** Pursuant to RCW 19.230.070 and WAC 208-690-070, the
11 Director may deny a money transmitter license application if the Director determines that the character
12 and general fitness of the applicant indicate that it is not in the interest of the public to permit the
13 applicant to engage in the business of providing money transmission services.

14 **3.2 Prohibit from Industry.** Pursuant to RCW 19.230.250, the Director may issue an order to
15 prohibit a person from continuing to engage in providing money services, and to prohibit from
16 participation in the affairs of any licensee or authorized delegate, or both, any executive officer, person
17 in control, or employee of the person for any violation of RCW 19.230.030.
18

19 **3.3 Authority to Impose Fine.** Pursuant to RCW 19.230.250 and RCW 19.230.290, the Director
20 may issue an order to impose civil money penalties on a person for any violation of the Act or a rule
21 adopted under the Act, not to exceed \$100 per day for each day the violation is outstanding.

22 **3.4 Authority to Order Restitution.** Pursuant to RCW 19.230.250, the Director may issue an
23 order to compel a person to pay restitution to damaged parties for any violation of RCW 19.230.030.
24

1 **3.5 Authority to Collect Investigation Fee.** Pursuant to RCW 19.230.130(2), RCW 19.230.290,
2 RCW 19.230.320(1)(c) and (2), WAC 208-690-170, and WAC 208-690-180(2), the Department may
3 collect the costs of investigations and examinations. The fee will be calculated at the rate of \$75 per
4 hour.

5 **IV. NOTICE OF INTENT TO ENTER ORDER**

6 Respondents' violations of the provisions of chapter 19.230 RCW and chapter 208-690 WAC, as
7 set forth in the above Factual Allegations and Grounds for Entry of Order, constitute a basis for the entry
8 of an Order under RCW 19.230.070, RCW 19.230.130, RCW 19.230.250, RCW 19.230.290, RCW
9 19.230.320, and RCW 19.230.340. Therefore, it is the Director's intention to ORDER that:

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- 11 **4.1** Respondent Nationwide Biweekly Administration, Inc.'s money transmitter license
application be denied;
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- 13 **4.2** Respondent Nationwide Biweekly Administration, Inc. and Respondent Daniel S. Lipsky
be prohibited from participation in the conduct of the affairs of any money transmitter or
14 currency exchanger subject to licensure by the Department, or any authorized delegate, or
both, for a period of five (5) years;
- 15
- 16 **4.3** Respondent Nationwide Biweekly Administration, Inc. and Respondent Daniel S. Lipsky
jointly and severally pay a fine of \$150,000;
- 17
- 18 **4.4** Respondent Nationwide Biweekly Administration, Inc. and Respondent Daniel S. Lipsky
jointly and severally pay restitution in the form of all fees collected by Respondent
19 Nationwide Biweekly Administration, Inc. from residential mortgage loan borrowers in
the state of Washington during the period in which it engaged in the business of a money
20 transmitter in the state of Washington without being approved by the Department for a
money transmitter license, in an amount to be determined at hearing;
- 21
- 22 **4.5** Respondent Nationwide Biweekly Administration, Inc. and Respondent Daniel S. Lipsky
jointly and severally pay an investigation fee which as of the date of this Statement of
Charges totals \$3,975, calculated at \$75 per hour for 53 hours to date; and
- 23
- 24 **4.6** Respondent Nationwide Biweekly Administration, Inc. and Respondent Daniel S. Lipsky
maintain records in compliance with the Act and provide the Department with the
location of the books, records and other information relating to Respondents' money
25 transmitter business, and the name, address and telephone number of the individual
responsible for maintenance of such records in compliance with the Act.

1 **V. AUTHORITY AND PROCEDURE**

2 This Statement of Charges is entered pursuant to the provisions of RCW 19.230.220 and
3 RCW 19.230.310, and is subject to the provisions of chapter 34.05 RCW (The Administrative
4 Procedure Act). Respondents may make a written request for a hearing as set forth in the NOTICE OF
5 OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this Statement
6 of Charges

7 Dated this 21st day of August, 2013.



DEBORAH BORTNER
Director
Division of Consumer Services
Department of Financial Institutions

13 Presented by:

14

15 KENNETH J. SUGIMOTO
16 Financial Legal Examiner

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18 Approved by:

19

20 CHARLES E. CLARK
21 Enforcement Chief